REMARKS

Entry of the foregoing, and further and favorable consideration of the subject application are respectfully requested.

By the present Amendment, claims 13 to 17 have been amended to be dependent from claim 7. No new matter has been added.

Turning now to the Official Action, requiring restriction under 35 USC 121, Applicants hereby elect, albeit with traverse, the claims of Group II, *i.e.*, claims 1-12 and 20-21, drawn to an acceptor vector of the present invention having the recited components, wherein the promoter or promoter region is a plant-expressible promoter and a kit comprising the same. Applicants further elect, albeit with traverse, the species of Group II wherein the selectable marker gene is a toxic gene (d).

Applicants respectfully submit that the Restriction requirement as set forth is incorrect, and request its withdrawal and examination of all of the claims of record on the merits.

The Examiner asserts that the claims of Group I, Group II and Group VIII lack unity of invention, based on the distinction that the promoter region is recognized by an RNA polymerase of a non-plant eukaryotic cell (Group I) or that the promoter is a plant-expressible promoter (Group II) or that the promoter region is recognized by a prokaryotic RNA polymerase (Group VIII). Specifically, at pp 4-5 of the Official Action, the Examiner acknowledges that MPEP 803.02 indicates that "unity of invention exists if all species recited in a claim (1) shows a common utility, and (2) share a substantial structural feature disclosed as being essential to that utility". Based on this section, the Examiner argues that there is a lack of unity of invention because there is allegedly no substantial common core

structure between non-plant and plant promoters of the promoters recognized by prokaryotic RNA polymerase of the claims of Groups I and II.

However, the vectors claimed in Groups I, II, and VIII share a common utility: they are all acceptor vectors which allow the generation of chimeric genes which can be transcribed into dsRNA or RNAi, suitable for gene silencing of a target nucleic acid of interest. Moreover, all the vectors claimed in Groups I, II, and VIII share as substantial structural feature: the presence of the four recombination sites in the particular order and as characterized in claim 1 or claim 18. It is the presence and arrangement of these recombination sites which is essential to the utility of the claimed vectors - specifically, as an acceptor vector in recombinational cloning to generate chimeric genes with an inverted repeat in the transcribed region. The particular promoter used to transcribe the chimeric gene is manifestly *not* essential to the utility of the claimed vectors. Thus, rejoinder of at least the claims of Groups I, II and VIII is warranted.

The vectors claimed in Groups III, IV, V, VI, and VII are particular acceptor vectors characterized by their specific nucleotide sequence. In each case, the vectors contain the four recombination sites discussed above, in the particular order characterized in claim 1 or claim 18. Applicants respectfully direct the Examiner's attention to Figures 3 and 4, to the sequence listing itself, and to paragraph 96 of the specification. As can be seen from the sequence listing and from paragraph 96, SEQ ID 13 is the nucleotide sequence of pHELLSGATE, SEQ ID NO 23 is the nucleotide sequence of pHELLSGATE 8, SEQ ID NO 25 is the nucleotide sequence of pHELLSGATE 11, and SEQ ID NO 26 is the nucleotide sequence of pHELLSGATE 12. A schematic drawing of these plasmids can be found in Figures 3 and 4. These figures indicate the presence in the recited vectors of

recombination sites attP1-attP2-attP2-attP1 or attR1-attR2-attR2-attR1. The specification, at least in paragraphs 49 to 52, makes clear that these are recombination sites as recited in claim 1 or claim 18. Thus, these vectors characterized by their nucleotide sequences share again common utility, as they can all be used as acceptor vectors to generate chimeric genes with an inverted repeat in the transcribed region. They also share as substantial structural features disclosed as being essential to that utility the presence of the four recombination sites, in the order and as characterized by claims 1 and 18. Finally, these specific vectors also all comprise a CaMV35S promoter, which is a plant expressible promoter. Claims 13-17 have been amended to depend from claim 7, which recites a plant-expressible promoter. Thus, at the very least, rejoinder of Groups III-VII with Group II is warranted. However, as noted above, Applicants maintain that the specific promoter used in the claimed vectors is not essential for the utility of the acceptor vectors. Consequently, rejoinder of the claims of Groups III-VII with the claims of Groups I and VIII is also warranted.

With regard to the inventions characterized as Group 9 and 10, we should probably indicate to the Examiner that the MPEP indicates that claims directed towards a compound (i.e. the acceptor vectors of Group I, II or VIII), and a method of making that compound are allowable in one application. Thus at least one of the methods (e.g., as drawn to the in vitro methods should be rejoined to the elected invention).

Similarly, the MPEP indicates that claims directed towards a compound (i.e. the acceptor vectors of Group I, II or VIII), and a method of using that compound are appropriate in one application. Thus, at least claims 28 and 29 of the inventions characterized as Groups XI and XII should be rejoined to the elected invention.

Summary

From the foregoing, withdrawal of the Restriction Requirement, and early and favorable consideration of all of the claims of record on the merits are respectfully requested.

In the event that there are any questions concerning this paper, or the application in general, the Examiner is respectfully urged to telephone Applicants' undersigned representative so that prosecution of the application may be expedited.

Respectfully submitted,

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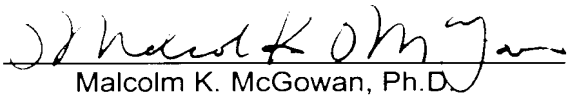
By: 
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